

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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P.C.R. *and* A.D.R., individually and as
parents and natural guardians on behalf of
P.R., *and* P.R., individually,

Plaintiffs,

16 **CIVIL** 9778 (KMK)

-against-

JUDGMENT

FLORIDA UNION FREE SCHOOL
DISTRICT *and* ORANGE-ULSTER BOARD
OF COOPERATIVE EDUCATIONAL
SERVICES,

Defendants.

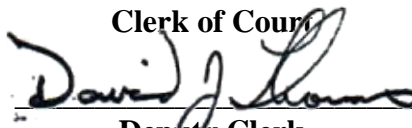
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It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion and Order dated February 4, 2022, BOCES's Motion for Summary Judgment is granted, FUFSDs Motion for Summary Judgment is granted, and Plaintiffs' Cross-Motion for Summary Judgment is denied. Judgment is entered for BOCES on all claims against BOCES; and enter judgment for FUFSD on all claims against FUFSD, with the exception of Plaintiffs' IDEA claim against FUFSD. While the Court agrees with FUFSD's arguments on Plaintiffs' IDEA claim against FUFSD for the reasons explained above, FUFSD has not moved for summary judgment on this claim, (see FUFSD's Mem.), and the Court declines to grant summary judgment for FUFSD sua sponte, see *Spiel Assocs., Inc. v. Gateway Bookbinding Sys., Ltd.*, No. 03-CV-4696, 2010 WL 546748, at *12 (E.D.N.Y. Feb. 16, 2010) ("Although [the defendant] has not moved for summary judgment on [one of the plaintiff's claims], the [c]ourt invited the parties to submit letter briefs as to whether summary judgment dismissing the claim would be warranted. 'District courts are widely acknowledged to possess the power to enter

summary judgment sua sponte, so long as the losing party was on notice that she had to come forward with all of her evidence.'" (italics and alteration omitted) (quoting Celotex, 477 U.S. at 326)); see also M.A., 1 F. Supp. 3d at 148 n.12 (adopting recommendation in IDEA case that "[although] [the defendant] did not move for summary judgment" that certain unexhausted claims be dismissed, explaining that the "prejudice associated with [the] sua sponte grant of summary judgment is minimized if [the] party against whom it is granted had notice and opportunity to defend against the arguments against it, or if the party had no additional evidence to bring" (italics and quotation marks omitted)); Dempsey v. Town of Brighton, 749 F. Supp. 1215, 1220 (W.D.N.Y. 1990) ("It is well settled that summary judgment may be rendered in favor of the opposing party even though he has made no formal cross-motion under Rule 56." (collecting cases)), aff'd, 940 F.2d 648 (2d Cir. 1991), cert. denied, 502 U.S. 925 (1991). As such, FUFSD shall file a letter with the Court by no later than two weeks from the date of this Opinion explaining why FUFSD is entitled to summary judgment on Plaintiffs' IDEA claim against FUFSD. Plaintiffs shall have two weeks to respond thereafter. There will be no extensions.

Dated: New York, New York
February 4, 2022

RUBY J. KRAJICK

BY: 
Clerk of Court
Deputy Clerk